

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARLOS PARRA, individually and on behalf of others
similarly situated,

Case No.: 16-cv-08079-RWS

Plaintiff,

ANSWER

-against-

42-15 235TH STREET HOSPITALITY LLC d/b/a
SOUTHERN HOSPITALITY BBQ), SHNY
RESTAURANT GROUP LLC. (d/b/a SOUTHERN
HOSPITALITY BBQ), and EYTAN SUGARMAN

Defendants.

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Defendants 42-15 235TH Street Hospitality LLC d/b/a Southern Hospitality BBQ, SHNY
Restaurant Group LLC. d/b/a Southern Hospitality BBQ, and Eytan Sugarman (hereinafter
“Defendants”), by their attorneys Certilman Balin Adler & Hyman, LLP as and for their answer
to plaintiffs verified complaint (the “Complaint”) respectfully set forth as follows upon
information and belief and at all times hereinafter mentioned:

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“NATURE OF ACTOIN”**

1. Deny the truth of the allegations contained in paragraph 1 of the Complaint.
2. Deny the truth of the allegations contained in paragraph 2 of the Complaint.
3. Deny the truth of the allegations contained in paragraph 3 of the Complaint.
4. Deny the truth of the allegations contained in paragraph 4 of the Complaint.
5. Deny the truth of the allegations contained in paragraph 5 of the Complaint.
6. Deny the truth of the allegations contained in paragraph 6 of the Complaint.
7. Deny the truth of the allegations contained in paragraph 7 of the Complaint.
8. Deny the truth of the allegations contained in paragraph 8 of the Complaint.

9. Deny the truth of the allegations contained in paragraph 9 of the Complaint.
10. Deny the truth of the allegations contained in paragraph 10 of the Complaint.
11. Deny the truth of the allegations contained in paragraph 11 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.
12. Deny the truth of the allegations contained in paragraph 12 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“JURISDICTION AND VENUE”**

13. Deny the truth of the allegations contained in paragraph 13 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.
14. Deny the truth of the allegations contained in paragraph 14 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER
THE HEADING “PARTIES”**

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.
16. Deny the truth of the allegations contained in paragraph 16 of the Complaint.
17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.
18. Deny the truth of the allegations contained in paragraph 18 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.
19. Deny the truth of the allegations contained in paragraph 19 of the Complaint.
20. Admits the allegations contained in paragraph 20 of the Complaint.
21. Admits the allegations contained in paragraph 21 of the Complaint.

22. Deny the truth of the allegations contained in paragraph 22 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

23. Deny the truth of the allegations contained in paragraph 23 of the Complaint.

24. Deny the truth of the allegations contained in paragraph 24 of the Complaint.

25. Deny the truth of the allegations contained in paragraph 25 of the Complaint.

26. Deny the truth of the allegations contained in paragraph 26 of the Complaint.

27. Deny the truth of the allegations contained in paragraph 27 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

28. Deny the truth of the allegations contained in paragraph 28 of the Complaint.

29. Deny the truth of the allegations contained in paragraph 29 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

30. Deny the truth of the allegations contained in paragraph 30 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

31. Deny the truth of the allegations contained in paragraph 31(a) through 31(h) of the Complaint.

32. Deny the truth of the allegations contained in paragraph 32 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

33. Deny the truth of the allegations contained in paragraph 33 of the Complaint.

34. Deny the truth of the allegations contained in paragraph 34 of the Complaint.

35. Deny the truth of the allegations contained in paragraph 35 of the Complaint.

36. Admits the allegations contained in paragraph 36 of the Complaint.

37. Deny the truth of the allegations contained in paragraph 37 of the Complaint and respectfully refer all questions of law to the Court for determination upon the trial of this matter.

- 38. Deny the truth of the allegations contained in paragraph 38 of the Complaint.
- 39. Deny the truth of the allegations contained in paragraph 39 of the Complaint.
- 40. Admits the allegations contained in paragraph 40 of the Complaint.
- 41. Deny the truth of the allegations contained in paragraph 41 of the Complaint.
- 42. Deny the truth of the allegations contained in paragraph 42 of the Complaint.
- 43. Deny the truth of the allegations contained in paragraph 43 of the Complaint.
- 44. Deny the truth of the allegations contained in paragraph 44 of the Complaint.
- 45. Deny the truth of the allegations contained in paragraph 45 of the Complaint.
- 46. Deny the truth of the allegations contained in paragraph 46 of the Complaint.
- 47. Admits the allegations contained in paragraph 47 of the Complaint.
- 48. Deny the truth of the allegations contained in paragraph 48 of the Complaint.
- 49. Deny the truth of the allegations contained in paragraph 49 of the Complaint.
- 50. Deny the truth of the allegations contained in paragraph 50 of the Complaint.
- 51. Deny the truth of the allegations contained in paragraph 51 of the Complaint.
- 52. Deny the truth of the allegations contained in paragraph 52 of the Complaint.
- 53. Deny the truth of the allegations contained in paragraph 53 of the Complaint.
- 54. Deny the truth of the allegations contained in paragraph 54 of the Complaint.
- 55. Deny the truth of the allegations contained in paragraph 55 of the Complaint.
- 56. Deny the truth of the allegations contained in paragraph 56 of the Complaint.
- 57. Deny the truth of the allegations contained in paragraph 57 of the Complaint.
- 58. Deny the truth of the allegations contained in paragraph 58 of the Complaint.
- 59. Deny the truth of the allegations contained in paragraph 59 of the Complaint.
- 60. Deny the truth of the allegations contained in paragraph 60 of the Complaint.

- 61. Deny the truth of the allegations contained in paragraph 61 of the Complaint.
- 62. Deny the truth of the allegations contained in paragraph 62 of the Complaint.
- 63. Deny the truth of the allegations contained in paragraph 63 of the Complaint.
- 64. Deny the truth of the allegations contained in paragraph 64 of the Complaint.
- 65. Deny the truth of the allegations contained in paragraph 65 of the Complaint.
- 66. Deny the truth of the allegations contained in paragraph 66 of the Complaint.
- 67. Deny the truth of the allegations contained in paragraph 67 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER
THE HEADING "FLSA COLLECTIVE ACTION CLAIMS"**

- 68. Deny the truth of the allegations contained in paragraph 68 of the Complaint.
- 69. Deny the truth of the allegations contained in paragraph 69 of the Complaint.
- 70. Deny the truth of the allegations contained in paragraph 70 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING "FIRST
CAUSE OF ACTION VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA"**

71. Defendants repeat, reiterate and reallege each and every denial and admission above as if fully set forth herein.

- 72. Deny the truth of the allegations contained in paragraph 72 of the Complaint.
- 73. Deny the truth of the allegations contained in paragraph 73 of the Complaint.
- 74. Deny the truth of the allegations contained in paragraph 74 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
"SECOND CAUSE OF ACTION VIOLATION OF THE OVERTIME PROVISIONS OF
THE NEW YORK STATE LABOR LAWS"**

75. Defendants repeat, reiterate and reallege each and every denial and admission above as if fully set forth herein.

- 76. Deny the truth of the allegations contained in paragraph 76 of the Complaint.

77. Deny the truth of the allegations contained in paragraph 77 of the Complaint.

78. Deny the truth of the allegations contained in paragraph 78 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“THIRD CAUSE OF ACTION VIOLATION OF THE SPREAD OF HOURS WAGE
ORDER OF THE NEW YORK COMMISSIONER OF LABOR”**

79. Defendants repeat, reiterate and reallege each and every denial and admission above as if fully set forth herein.

80. Deny the truth of the allegations contained in paragraph 80 of the Complaint.

81. Deny the truth of the allegations contained in paragraph 81 of the Complaint.

82. Deny the truth of the allegations contained in paragraph 82 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“FOURTH CAUSE OF ACTION VIOLATION OF THE NOTICE AND
RECORDKEEPING REQUIREMENTS OF THE NEW YORK LABOR LAW”**

83. Defendants repeat, reiterate and reallege each and every denial and admission above as if fully set forth herein.

84. Deny the truth of the allegations contained in paragraph 84 of the Complaint.

85. Deny the truth of the allegations contained in paragraph 84 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“FIFTH CAUSE OF ACTION (VIOLATION OF THE WAGE STATEMENT
PROVISIONS OF THE NEW YORK LABOR LAW)”**

86. Defendants repeat, reiterate and reallege each and every denial and admission above as if fully set forth herein.

87. Deny the truth of the allegations contained in paragraph 87 of the Complaint.

88. Deny the truth of the allegations contained in paragraph 88 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“SIXTH CAUSE OF ACTION (RECOVERY OF EQUIPMENT COSTS)”**

89. Defendants repeat, reiterate and reallege each and every denial and admission above as if fully set forth herein.

90. Deny the truth of the allegations contained in paragraph 90 of the Complaint.

91. Deny the truth of the allegations contained in paragraph 91 of the Complaint.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS UNDER THE HEADING
“PRAYER FOR RELIEF”**

Deny the truth of the allegations contained in the wherefore paragraph under the heading “Prayer for Relief” subsections (a) through (p) on pages 15-17 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

92. The Complaint fails to state a claim upon which relief can be granted against Defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

93. The claims alleged herein are barred, in whole or in part, by the applicable statutes of limitation including but not limited to, the two and three year statutes of limitation pertinent to Plaintiff's FLSA claims, and the six year statute of limitations pertinent to Plaintiffs' New York Labor Law claims.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

94. Plaintiff's claims are not typical of those of the purported class.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

95. Plaintiff is prohibited from bringing a class action for their claims under the New York Labor Law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

96. At all times alleged in the Complaint, Defendants complied with all requirements concerning payment of wages, including without limitation, minimum wage, spread of hour, call-in pay and application of tip credit pursuant to the FLSA and New York State law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

97. Defendants' actions were in good faith conformity with and/or reliance on administrative regulation, order, ruling, approval, interpretation, or practice of the United States Department of Labor.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

98. No alleged action by Defendants was willful under the FLSA

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

99. Defendants at all time acted in good faith complying with their obligations under the FLSA and New York State law. Accordingly, liquidated damages are not available or warranted under the provisions of the FLSA or New York State law.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

100. Plaintiff failed to mitigate any alleged damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

101. Plaintiff's claims are barred by the doctrines of waiver, estoppel, unclean hands and/or laches.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

102. The members of the purported class(es) that Plaintiff seeks to represent in this action are not so numerous that joinder of all members is impracticable.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

103. To the extent Plaintiff, or any member of the class he purports to represent, have suffered injury, which is denied, that injury is the result of acts or omissions of the Plaintiffs and/or said purported class members, and not any act or omission of Defendants.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

104. Plaintiff and/or the putative members of the purported class alleged in the Complaint may be exempt from overtime requirements under the FLSA and/or the New York Labor Law and therefore are not entitled to overtime pay during all relevant periods.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

105. If Defendants are found to have failed to pay Plaintiff(s), and/or any putative members of the purported class alleged in the Complaint, any amount due, which Defendants deny, Defendants are entitled to set off any overpayments or other sums owed by Plaintiffs or putative class members against any judgment.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

106. Plaintiff has not and cannot establish the requirements of a collective action or class action under the Federal Rules of Civil Procedure because they are not similarly situated.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

107. Plaintiff cannot establish or satisfy the requirements for a collective action pursuant to the FLSA and therefore, the collective action allegations of the Complaint must be stricken and dismissed.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

108. Plaintiff's claim cannot proceed as a class action because the FLSA and its collective action procedure preempt state law that might otherwise permit class action treatment.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

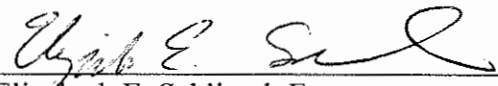
109. Plaintiff cannot establish or satisfy the requirements for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure and therefore, the class certification allegations of the Complaint should be stricken and dismissed.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

110. Plaintiff's demand for liquidated damages renders this action inappropriate for treatment as a class action.

WHEREFORE, Defendants respectfully demand judgment dismissing Plaintiff's Complaint in its entirety, together with costs, disbursements, attorneys' fees and such other and further relief as the Court deems just, proper and equitable.

Dated: East Meadow, New York
December 13, 2016

By: 
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